
SENATE BILL 5769

State of Washington

54th Legislature

1995 Regular Session

By Senator Deccio; by request of Employment Security Department

Read first time 02/06/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to recovery of unemployment insurance overpayments;
2 amending RCW 50.20.190; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 50.20.190 and 1993 c 483 s 13 are each amended to read
5 as follows:

6 (1) An individual who is paid any amount as benefits under this
7 title to which he or she is not entitled shall, unless otherwise
8 relieved pursuant to this section, be liable for repayment of the
9 amount overpaid. The department shall issue an overpayment assessment
10 setting forth the reasons for and the amount of the overpayment. The
11 amount assessed, to the extent not collected, may be deducted from any
12 future benefits payable to the individual: PROVIDED, That in the
13 absence of fraud, misrepresentation, or willful nondisclosure, every
14 determination of liability shall be mailed or personally served not
15 later than two years after the ~~((close of))~~ final payment made on the
16 individual's applicable benefit year ~~((in))~~ for which the purported
17 overpayment was made unless the merits of the claim are subjected to
18 administrative or judicial review in which event the period for serving
19 the determination of liability shall be extended to allow service of

1 the determination of liability during the six-month period following
2 the final decision affecting the claim.

3 (2) The commissioner may waive an overpayment if the commissioner
4 finds that said overpayment was not the result of fraud,
5 misrepresentation, willful nondisclosure, or fault attributable to the
6 individual and that the recovery thereof would be against equity and
7 good conscience: PROVIDED, HOWEVER, That the overpayment so waived
8 shall be charged against the individual's applicable entitlement for
9 the eligibility period containing the weeks to which the overpayment
10 was attributed as though such benefits had been properly paid.

11 (3) Any assessment herein provided shall constitute a determination
12 of liability from which an appeal may be had in the same manner and to
13 the same extent as provided for appeals relating to determinations in
14 respect to claims for benefits: PROVIDED, That an appeal from any
15 determination covering overpayment only shall be deemed to be an appeal
16 from the determination which was the basis for establishing the
17 overpayment unless the merits involved in the issue set forth in such
18 determination have already been heard and passed upon by the appeal
19 tribunal. If no such appeal is taken to the appeal tribunal by the
20 individual within thirty days of the delivery of the notice of
21 determination of liability, or within thirty days of the mailing of the
22 notice of determination, whichever is the earlier, said determination
23 of liability shall be deemed conclusive and final. Whenever any such
24 notice of determination of liability becomes conclusive and final, the
25 commissioner, upon giving at least twenty days notice by certified mail
26 return receipt requested to the individual's last known address of the
27 intended action, may file with the superior court clerk of any county
28 within the state a warrant in the amount of the notice of determination
29 of liability plus a filing fee of five dollars. The clerk of the
30 county where the warrant is filed shall immediately designate a
31 superior court cause number for the warrant, and the clerk shall cause
32 to be entered in the judgment docket under the superior court cause
33 number assigned to the warrant, the name of the person(s) mentioned in
34 the warrant, the amount of the notice of determination of liability,
35 and the date when the warrant was filed. The amount of the warrant as
36 docketed shall become a lien upon the title to, and any interest in,
37 all real and personal property of the person(s) against whom the
38 warrant is issued, the same as a judgment in a civil case duly docketed
39 in the office of such clerk. A warrant so docketed shall be sufficient

1 to support the issuance of writs of execution and writs of garnishment
2 in favor of the state in the manner provided by law for a civil
3 judgment. A copy of the warrant shall be mailed to the person(s)
4 mentioned in the warrant by certified mail to the person's last known
5 address within five days of its filing with the clerk.

6 (4) On request of any agency which administers an employment
7 security law of another state, the United States, or a foreign
8 government and which has found in accordance with the provisions of
9 such law that a claimant is liable to repay benefits received under
10 such law, the commissioner may collect the amount of such benefits from
11 the claimant to be refunded to the agency. In any case in which under
12 this section a claimant is liable to repay any amount to the agency of
13 another state, the United States, or a foreign government, such amounts
14 may be collected without interest by civil action in the name of the
15 commissioner acting as agent for such agency if the other state, the
16 United States, or the foreign government extends such collection rights
17 to the employment security department of the state of Washington, and
18 provided that the court costs be paid by the governmental agency
19 benefiting from such collection.

20 (5) Any employer who is a party to a back pay award or settlement
21 due to loss of wages shall, within thirty days of the award or
22 settlement, report to the department the amount of the award or
23 settlement, the name and social security number of the recipient of the
24 award or settlement, and the period for which it is awarded. When an
25 individual has been awarded or receives back pay, for benefit purposes
26 the amount of the back pay shall constitute wages paid in the period
27 for which it was awarded. For contribution purposes, the back pay
28 award or settlement shall constitute wages paid in the period in which
29 it was actually paid. The following requirements shall also apply:

30 (a) The employer shall reduce the amount of the back pay award or
31 settlement by an amount determined by the department based upon the
32 amount of unemployment benefits received by the recipient of the award
33 or settlement during the period for which the back pay award or
34 settlement was awarded;

35 (b) The employer shall pay to the unemployment compensation fund,
36 in a manner specified by the commissioner, an amount equal to the
37 amount of such reduction;

38 (c) The employer shall also pay to the department any taxes due for
39 unemployment insurance purposes on the entire amount of the back pay

1 award or settlement notwithstanding any reduction made pursuant to (a)
2 of this subsection;

3 (d) If the employer fails to reduce the amount of the back pay
4 award or settlement as required in (a) of this subsection, the
5 department shall issue an overpayment assessment against the recipient
6 of the award or settlement in the amount that the back pay award or
7 settlement should have been reduced; and

8 (e) If the employer fails to pay to the department an amount equal
9 to the reduction as required in (b) of this subsection, the department
10 shall issue an assessment of liability against the employer which shall
11 be collected pursuant to the procedures for collection of assessments
12 provided herein and in RCW 50.24.110.

13 (6) When an individual fails to repay an overpayment assessment
14 that is due and fails to arrange for satisfactory repayment terms, the
15 commissioner shall impose an interest penalty of one percent per month
16 of the outstanding balance. Interest shall accrue immediately on
17 overpayments assessed pursuant to RCW 50.20.070 and shall be imposed
18 when the assessment becomes final. For any other overpayment, interest
19 shall accrue when the individual has missed two or more of their
20 monthly payments either partially or in full. The interest penalty
21 shall be used to fund detection and recovery of overpayment and
22 collection activities.

23 NEW SECTION. **Sec. 2.** If any part of this act is found to be in
24 conflict with federal requirements that are a prescribed condition to
25 the allocation of federal funds to the state or the eligibility of
26 employers in this state for federal unemployment tax credits, the
27 conflicting part of this act is hereby declared to be inoperative
28 solely to the extent of the conflict, and such finding or determination
29 shall not affect the operation of the remainder of this act. The rules
30 under this act shall meet federal requirements that are a necessary
31 condition to the receipt of federal funds by the state or the granting
32 of federal unemployment tax credits to employers in this state.

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